IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BUILDERTREND SOLUTIONS, INC., a Nebraska Corporation Plaintiff, vs. **VBCONVERSIONS, LLC**, a California Limited Liability Company, Defendant.	CIVIL ACTION NO. ____________ **COMPLAINT** **Jury Trial Demanded**

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, BuilderTrend Solutions, Inc. ("BuilderTrend" or Plaintiff"), by and through its undersigned counsel, brings this Complaint for declaratory judgment against Defendant, VBConversions, LLC ("VBC" or "Defendant"). This Complaint is in response to VBC's threats to sue BuilderTrend, for copyright infringement and violation of the federal Digital Millennium Copyright Act ("DMCA"). Plaintiff brings this action to establish it has not infringed any valid copyright of Defendant, has not violated the DMCA, is not otherwise liable to the Defendant under any provision of any law (including the Copyright Laws and the DMCA).

THE PARTIES

1. BuilderTrend is a Nebraska corporation with its principal place of business in Omaha, Nebraska. BuilderTrend provides construction support services to developers, builders, owners and others.

2. Defendant VBC is, upon information and belief, a California limited liability company with its headquarters in Santa Monica, California. Upon information and belief, VBC operates an interactive website, www.vbconversions.com (the "VBC Website"), which offers for license (and download) software called "VB.Net to C# Converter" (hereinafter, the "Conversion Software").

JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, et seq., because a justiciable case or controversy exists between the parties and a declaration by this Court will terminate the controversy.

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), because an actual case or controversy exists between the parties relating to Federal copyright law.

5. This Court possess personal jurisdiction over VBC because VBC transacts business or performs work or services in Nebraska by and through its website. Specifically, and upon information and belief, VBC offers and sells the Conversion Software to Nebraska residents, with whom VBC has ongoing transactions and relationships. Additionally, this controversy arises out of VBC's contacts with the Plaintiff in Nebraska, including its threats against the Plaintiff regarding Plaintiff's alleged activities on and through the VBC Website.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because this Court has personal jurisdiction over Defendant VBC and because a

substantial part of the events or omissions giving rise to the claims occurred in this district.

FACTS

7. VBC offers its Converter Software for license and download on its website (vbconversions.com), to residents in Nebraska and throughout the United States.

8. VBC's Software Converter is a computer program having a user interface operating an algorithm for converting a user's input program from a native program language (Visual Basic) to an output program language in another (C#).

9. VBC's converter is designed not to add, change, or otherwise alter the functionality of any programmed feature in any VBC converted user's code or program.

10. VBC offers a free "No registration required 15 day trial period" with a "2000 line per project limitation" on its website with an option to convert the "Trial edition … into [a] full version after purchase … No additional downloads needed".

11. VBC alleged, through counsel, in a letter dated September 29, 2016, addressed to Plaintiff in Nebraska:

> On Thursday September 15, 2016 at 5:35 p.m. CST Dan Patten operating … computer ending in 70JHKD9, affirmed the VBC EULA and was permitted to enter the Trial version of the software. Following on this affirmation, on September 17, 2016 at 1:55 a.m., CST, Mr. Patten introduced a false registration key into the Trial version … unlocking the Program without the knowledge or consent of VBC. On a separate date of September 19, 2016 at 5:23 p.m. CST, Mr. Kirkland, using a computer ending in JTJMLHQ affirmed the VBC EULA … and introduced the same false registration key.
>
> * * *
>
> Both [Patten and Kirkland] relied upon the notorious hacking group called Linezer0 for the key entered [to gain access to the program].

12. On or after September 19, 2016, and before VBC's notice and demand to Plaintiff in VBC's letter of September 29, 2016, Plaintiff purchased rights to a full version of VBC's software pursuant to VBC's terms and conditions, namely, $199.00 for a perpetual, unlimited use license to the Conversion Software.

13. Subsequent to Plaintiff's purchase of a full version of Defendant's Conversion Software, and before Defendant's September 29, 2016 notice and demand to Plaintiff, Defendant notified Plaintiff it had canceled Plaintiff's license to the Conversion Software.

14. On or after September 29, 2016, Plaintiff received Defendant's notice and demand via a letter dated September 29, 2016 from Defendant's legal counsel to Jake Johnson (Director of Development, BuilderTrend Solutions, Inc., 11718 Nicholas Street, Omaha, NE 68154).

15. In its correspondence to Plaintiff, VBC alleged it is the owner of all copyright rights to the Conversion Software.

16. VBC's letter alleges that Plaintiff's activities violated VBC's copyright rights to the Conversion Software pursuant to the United States Copyright Act, 17 U.S.C. § 101, et seq. (the "Copyright Act"), and violated the DMCA, 17 U.S.C. § 1201, et seq.

17. Although the Conversion Software costs $199.00 for an unlimited use, lifetime license (which includes free upgrades for life), VBC has demanded $80,000.00 from Plaintiff under the threat of "filing a complaint in the U.S. District Court."

18. Plaintiff did not use the Conversion Software or its output for any commercial purpose, or to generate any profit or any product for any customer.

19. Nevertheless, VBC has continued to demand Plaintiff pay a penalty of at least 402-times the VBC Conversion Software license, and threatened to bring legal action against Plaintiff in California unless such sums are paid.

20. On information and belief, VBC has initiated at least 29 separate lawsuits; all in California, presumably after recipients of demand letters have refused to comply with VBC's payment demands.

21. VBC has engaged, and is still engaged, in abusive and/or improper exploitation and enforcement of their copyright(s), and this conduct is against public policy and contrary to the purpose and statutory language of the Copyright Act.

22. VBC has repeatedly and unfairly threatened Plaintiff with an expensive lawsuit in a distant jurisdiction unless it receives payment well in excess of any reasonable demand.

23. VBC has repeatedly and unfairly threatened Plaintiff with infringement penalties that exaggerate or misstate the law, including relying on unsustainable theories of damages that do not comport with copyright law, including the DMCA.

24. With respect to the present Plaintiff, VBC's counsel has refused (or ignored) requests for case law or authority that supports VBC's demands for such excessively-high damages and penalties related to the use of Conversion Software that costs $199.00 to license and use, perpetually.

25. The apparent purpose of VBC's tactic is to coerce outrageous sums of money from parties such as the Plaintiff by threatening expensive litigation in a distant venue.

26. In view of the above, Plaintiff and VBC have adverse legal interests, and VBC has created a real and immediate threat of injury to Plaintiff.

27. Accordingly, there is an actual present justiciable controversy between Plaintiff and VBC as to whether Plaintiff is liable to VBC for infringement under U.S. Copyright Law or liable to VBC under the DMCA, and if so, what the proper measure of damages or other relief should be.

COUNT I

REQUEST FOR DECLARATORY JUDGMENT

(Copyright Act)

28 U.S.C. § 2201, et seq.

28. Plaintiff incorporates by reference the allegations in Paragraphs 1 through 27 as if stated fully herein.

29. Plaintiff disputes it infringed any valid copyright in the Conversion Software owed by VBC, but to the extent that it is found to have infringed, it seeks a declaratory judgment that provides as follows:

A. The Plaintiff did not engage in willful infringement of any copyright rights to the Conversion Software owned by VBC;

B. The Plaintiff is not liable for statutory damages to VBC, or if it is, that the amount of such statutory damages is not $150,000, $80,000, $57,500 or any other amount that VBC has or may in the future threaten, or any amount greater than the Conversion Software license fee, but instead, an amount that is not a penalty, but is properly commensurate with actual actions and intent in using the Conversion Software, taking into account the actual cost of licensing the Conversion Software;

C. The Plaintiff is not liable for actual damages to VBC;

D. The Plaintiff is not liable to pay VBC's attorneys' fees; and/or

E. Such other declaratory relief that the Court deems necessary or just.

COUNT II

REQUEST FOR DECLARATORY JUDGMENT

(DMCA)

17 U.S.C. § 1201, et seq.

30. Plaintiff incorporates by reference the allegations in Paragraphs 1 through 29 as if stated fully herein.

31. VBC has accused Plaintiffs of violating the DMCA's anti-circumvention prohibits set forth in 17 U.S.C. § 1201, by using a "fraudulent" license key to open the full version of the Conversion Software.

32. Using a password or security code to access a copyrighted work, even without authorization, does not constitute "circumvention" under the DMCA. Moreover, the unauthorized use of a valid password does not constitute a violation of the DMCA.

33. Alternatively, Plaintiff's alleged use of a fraudulent passcode would not constitute more than a single act of circumvention, which would entitle VBC to a maximum award under the DMCA of $2,500.

34. Accordingly, Plaintiff seeks a declaratory judgment that it has not violated the DMCA with respect to BuilderTrend's alleged access to the Conversion Software.

COUNT III

REQUEST FOR DECLARATORY JUDGMENT

(Equity Bars any VBC Claim)

35. Plaintiff incorporates by reference the allegations in Paragraphs 1 through 34 as if stated fully herein.

36. VBC has acknowledged and demonstrated it is capable of identifying unauthorized users.

37. VBC has acknowledged it knew that the passcode allegedly utilized by Plaintiff, the "notorious registration key" that had been "used around the world for the past several years", yet VBC failed to take the simple measure of deactivating the "notorious key", thereby failing to cover or mitigate, and VBC has unclean hands and is barred by the doctrines of waiver and laches.

COUNT IV

REQUEST FOR DECLARATORY JUDGMENT

(Plaintiff is Not Vicariously Liable for the Conduct of Patten and Kirkland)

38. Plaintiff incorporates by reference the allegations in Paragraphs 1 through 37 as if stated fully herein.

39. BuilderTrend purchased a license to the Conversion Software prior to discovering the alleged wrongful conduct of Messrs. Patten and Kirkland.

40. Defendant canceled the license issued to Plaintiff and then made demands on Plaintiff to pay an incredible amount to VBC.

41. Plaintiff had no direct financial interest in avoiding the $199.00 perpetual Conversion Software license fee charged by VBC.

REQUEST FOR TRIAL BY JURY

Plaintiff hereby requests a trial by jury on all issues so triable.

PLACE OF TRIAL

Plaintiff hereby requests that trial take place in Omaha, Nebraska.

Dated: March 13, 2017

BUILDERTREND SOLUTIONS, INC.,
Plaintiff

/s/ David S. Houghton

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